



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1996

Mr. Donald G. Vandiver
First Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR96-0439

Dear Mr. Vandiver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 30445.

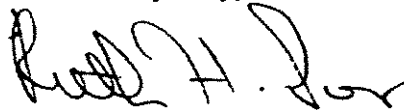
The City of Lubbock (the "city") has received a request for information relating to a certain fire investigated by the city fire department. Specifically, the requestor seeks the names of three children who allegedly started a fire that occurred on April 17, 1994. You seek to withhold the requested information, which you have submitted to us for review, in deference to "the privacy and property interests of third parties, *i.e.*, the children and their parents."

Information may be withheld under common-law privacy if it meets the criteria the Texas Supreme Court articulated for section 552.101 in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental body must withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. The right to privacy guaranteed under the United States Constitution protects two related interests: (1) the individual's interest in independence in making certain kinds of important decisions, and (2) the individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 478 (1987) at 4. The first interest applies to the traditional "zones of privacy," *i.e.*, marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447 (1986) at 4. The second protects information by employing a balancing test that weighs the privacy interest against the public interest. Open Records Decision No. 478 (1987) at 4. It protects against "invasions of privacy involving the most intimate aspects of human affairs." Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985) *cert. denied*, 474 U.S. 1062 (1986)).

We have examined the information submitted to us for review. We conclude that it does not contain information that is intimate or embarrassing and therefore may not be withheld under common-law privacy. Moreover, the submitted information does not contain information that falls within any of the "zones of privacy" recognized under the constitutional privacy doctrine, nor do we believe that release of the submitted information would cause "invasions of privacy involving the most intimate aspects of human affairs." Finally, we do not believe that there are any other third-party privacy or property interests, such as those enumerated in section 552.305 of the Government Code, that are implicated in this request for information.¹ Accordingly, you may not withhold the requested information under the common-law and constitutional doctrines of privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/LBC/ch

Ref.: ID# 30445

Enclosures: Submitted documents

¹We note that at the time the conduct occurred, the applicable law in effect was former Family Code section 51.14. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Sess. Law Serv. 2517, 2591 (amendments to Fam. Code including repeal of § 51.14 apply only to conduct occurring on or after January 1, 1996; conduct occurring before January 1, 1996, is governed by the law in effect at the time the conduct occurred).

Former section 51.14(d) of the Family Code is designed to protect the privacy interests of children charged with crimes and makes confidential, subject to certain exceptions, "the law-enforcement files and records [concerning a child]." Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590; *see also* Open Records Decision Nos. 181 (1977) at 2 (holding that police reports which identify juveniles or furnish basis for their identification are excepted by section 51.14(d)), 127 (1976) at 8 (concluding that arson investigation unit of city fire department "law enforcement agency" for purposes of Gov't Code § 552.108). "Child," for purposes of former section 51.14, is defined at section 51.02 of the Family Code as a person who is "ten years of age or older and under 17 years of age" or "seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age." You advise us that the children at issue here are between the ages of five and seven. Accordingly, the persons at issue here are not "children" for purposes of former section 51.14(d) of the Family Code; it does not apply in this instance.

cc: Ms. Nora Naegele
Claim Specialist
State Farm Insurance Companies
P.O. Box 64660
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(w/o enclosures)